

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Esa HARMA	Confirmation No.: 7550
Application No.: 09/881,452	Examiner: Khawar Iqbal
Filed: June 14, 2001	Group Art Unit: 2617

For: **METHOD AND ARRANGEMENT FOR DISTRIBUTING, EXECUTING
AND CONSUMING RECREATIONAL APPLICATIONS IN AND
BETWEEN MOBILE TELECOMMUNICATION DEVICES**

Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed July 24, 2009.

I. STATUS OF THE CLAIMS

Claims 1-44 remain rejected under 35 U.S.C. §102(c) as anticipated by *Shaw et al.* (US 2002/0083148).

The rejections of claims 1-44 under 35 U.S.C. §102(c) and 35 U.S.C. §103, as anticipated by *Hawkins et al.* (US 6,009,458) and as obvious based on *Perlman* (US 6,134,590) in view of *Hawkins et al.* (US 6,009,458), respectively, have been withdrawn by the Examiner in the Answer.

II. GROUNDS OF REJECTION TO BE REVIEWED

Whether claims 1-44 are anticipated under 35 U.S.C. §102(c) based on *Shaw et al.* (US 2002/0083148)?

III. ARGUMENT

Appellant maintains and incorporates the positions presented in the Appeal Brief filed February 12, 2008, but presents further refutation of certain assertions presented in the Examiner's Answer.

With regard to independent claim 1, the Examiner contends that the wireless access 34 depicted in Fig. 1 of *Shaw et al.* corresponds to the claimed mobile terminals. However, the Examiner has erred in this assessment for various reasons. First, the mere disclosure in *Shaw et al.* of "wireless access" does not equate to a disclosure of a mobile terminal or a "group of **mobile terminals**," as claimed (Claims 1-35 require the terminals to be **mobile** terminals). There are no "mobile terminals," as claimed, in the system of *Shaw et al.* Second, to whatever extent the wireless access in *Shaw et al.* can be considered to be "mobile terminals" (or "terminals" as in claims 36-44), each user in *Shaw et al.* has access to a node 24 connected to an ISP, but the users are not directly connected to each other. The term "direct" is not employed in the language of the instant claims on appeal, but it is clearly implied, since the transmission is **from a first terminal arrangement to a second terminal arrangement**. Claim 1 recites, *inter alia*, "transmitting **from a first terminal arrangement of said group of terminals to a second terminal arrangement of said group of terminals**, a proposal for setting up a session of utilizing a recreational application." Thus, the terminals of the claimed subject matter transmit from one to another terminal. *Shaw et al.* discloses no such arrangement and, therefore, cannot anticipate the instant claimed subject matter. Independent claims 36-44 similarly require a transmission between terminals, a feature not disclosed in *Shaw et al.*

At page 22 of the Answer, the Examiner asserts that *Shaw et al.* teaches, in Figs. 1 and 7, "transmitting from a first terminal (34, fig. 1, para. 30, users) of said group of terminals (34, fig. 1,

para. 30, users) to a second terminal (34, fig. 1, para. 30, users) said group of terminals (34, fig. 1, para. 30, users) an invitation 196, fig. 7, para. 30, line 12 [i.e., proposal] for setting up a session utilizing an online session software application.” Again, these users 30 are not, do not employ, and do not constitute “mobile terminals,” as claimed. Moreover, the engagement of a plurality of users in a gaming session is not via direct communication between mobile terminals. Each terminal in *Shaw et al.* accesses a centralized office, but not other terminals.

While the Examiner asserts that the invitation in paragraph [0030] of *Shaw et al.* is a transmission from a first terminal of a group of terminals to a second terminal of said group of terminals, Appellant respectfully disagrees. Users in *Shaw et al.* may communicate through a centralized office 24, but there is no direct communication between terminals, i.e., there is no “transmitting **from a first terminal arrangement** of said group of terminals **to a second terminal arrangement** of said group of terminals, a proposal for setting up a session of utilizing a recreational application.” Rather, the invitation in *Shaw et al.* is via the centralized office 24. Transmission from a terminal to a centralized office and then transmitting from a centralized office to another terminal is not equivalent to “transmitting **from a first terminal arrangement** of said group of terminals **to a second terminal arrangement** of said group of terminals, a proposal for setting up a session of utilizing a recreational application.” **Transmission from one terminal to another terminal implies no intermediary, i.e., a direct transmission or communication occurs between the terminals.**

Still further, claim 1 recites “**only after the second terminal arrangement has received said proposal**, using the communication capabilities of at least one of the first and second terminals arrangements to establish a state where **both the first terminal arrangement and the second terminal arrangement possess executable software components of said recreational**

application for setting up a common shared session and for executing said recreational application on said first and second terminals.” Not only does *Shaw et al.* lack a teaching of communication, in the manner claimed, between mobile terminals, or any other terminals, but there is also no disclosure in *Shaw et al.* relative to the terminals themselves possessing executable software components of the application. Significantly, as disclosed in paragraph [0030] of *Shaw et al.*, “the users each first downloads the online session software application...” Thus, in accordance with the disclosure of *Shaw et al.*, invitations to join the online session are exchanged **only after** obtaining the necessary executable software components of the application. Therefore, unlike the instant claimed invention, the system of *Shaw et al.* does not enable the proposal of sessions to users, or terminals, that do not have previous knowledge of the game. Whereas in *Shaw et al.*, all terminals to which invitations may be sent must already have access to the online session application before the invitations may be sent, in the instant claimed subject matter on appeal, it is only after an invitation is sent that a state is established where both terminals establish the software components to enable the session, i.e., “**only after the second terminal arrangement has received said proposal**, using the communication capabilities of at least one of the first and second terminals arrangements to establish a state where **both the first terminal arrangement and the second terminal arrangement possess executable software components of said recreational application** for setting up a common shared session and for executing said recreational application on said first and second terminals.”

At page 24, the Examiner rebuts Appellant’s argument by arguing that since content in *Shaw et al.* is updated during a session, this means that there is a downloading of software components after an invitation. Appellant respectfully disagrees. The updating of cache memory content is not the establishment of a “state where **both the first terminal arrangement and the**

second terminal arrangement possess executable software components of said recreational application for setting up a common shared session and for executing said recreational application on said first and second terminals.” As is clear from the claim language, “executable software components” are those components of the application necessary “for setting up a common shared session.” Updating content in a cache is not “setting up a common shared session.” Accordingly, for the reasons above, *Shaw et al.* does not disclose “**only after the second terminal arrangement has received said proposal**, using the communication capabilities of at least one of the first and second terminals arrangements to establish a state where **both the first terminal arrangement and the second terminal arrangement possess executable software components of said recreational application** for setting up a common shared session and for executing said recreational application on said first and second terminals.”

The above arguments relative to independent claim 1 are also applicable to independent claims 36-44 and are responsive to the Examiner’s arguments set forth at pages 22-42 of the Answer. Claims 36 and 38-42 do not specifically recite that “only after the second terminal arrangement has received said proposal...” is the session state established, but they have similar language in stating, as in claim 36, for example, “means for exchanging proposals for setting up sessions of utilizing a recreational application with other terminals...” and “means for responding to a situation where such proposals have been exchanged by using its a [sic] communicational capabilities capability [sic] of said terminal to establish a state where both the terminal arrangement and another terminal arrangement possess enough executable software components of said recreational application for setting up a common, shared session...”

Thus, independent claims 36-44, as in claim 1 above, enable a proposal of sessions to users, or terminals, that do not have previous knowledge of the game. That is, the necessary

software components are downloaded after the invitation, or proposal, has been made, which is quite different from the system described by *Shaw et al.* wherein only users already possessing the downloaded software components may be offered an invitation.

IV. CONCLUSION AND PRAYER FOR RELIEF

The claims require direct transmissions between at least two terminals and an enablement of the proposal of sessions to users, or terminals, that do not have previous knowledge of the game, e.g., “**only after the second terminal arrangement has received said proposal**, using the communication capabilities of at least one of the first and second terminals arrangements to establish a state where **both the first terminal arrangement and the second terminal arrangement possess executable software components of said recreational application** for setting up a common shared session and for executing said recreational application on said first and second terminals,” as in claim 1, but these features are non-existent in *Shaw et al.* Appellant, therefore, requests the Honorable Board to reverse each of the Examiner’s rejections.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

September 21, 2009

Date

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